

REMARKS

Applicants appreciate the Examiner's review of the above-identified patent application and respectfully requests reconsideration and allowance in view of the above amendments and following remarks. Applicants also respectfully request a telephone interview with Applicants' Attorney of Record to facilitate advancement of the present application.

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness of the pending claims under 35 U.S.C. § 103(a) in view of Carney (U.S. Patent No. 5,784,452, hereinafter referred to as "Carney") and Cambray et al. (U.S. Patent No. 5,381,470, hereinafter referred to as "Cambray").

The legal concept of *prima facie* obviousness is a procedural tool of examination that applies broadly to all arts. It allocates who has the burden of going forward with production of evidence in each step of the examination process. See *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976). The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. See MPEP section 2142 ("The examiner bears the initial burden of factually supporting any compensation conclusion of obviousness.) If the Examiner does not produce a

*prima facie* case, the Applicant is under no obligation to submit evidence of non-obviousness. *Id.* MPEP § 2142.

In order to establish a proper *prima facie* case of obviousness and reject claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967). In so doing, the Examiner is required to point out how the prior art reference (or references when combined) teach or suggest all the claim limitations. See MPEP 2143.

Applicants respectfully submit that the Examiner's statement in the Advisory Action in response to Applicants' previous arguments is a flagrant violation of the rules and case law as outlined above. See Advisory Action dated July 17, 2003, "[The] Examiner has found references that read on [the] main claimed invention. However, it is unreasonable to include citations to prior references for all the 'whistles and bells' that Applicant has in his claims." (Emphasis original.) Applicants submit that it is not only is reasonable for Applicants to require the Examiner to provide references for all the "whistles and bells",

but also required by the MPEP. Accordingly, Applicant respectfully submits that the finality of the Final Office Action dated May 6, 2003 (hereinafter the "Present Office Action") is improper irrespective of the ultimate patentability of the claims.

As discussed above, MPEP § 2143.03 states, in relevant part, "to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In Re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). 'All words in a claim must be considered in judging the patentability of a claim against the prior art.' *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." However, in the present Office Action, the Examiner explicitly acknowledges that Carney and Cambray do not disclose or suggested all the elements recited in claims 1, 6, 7, 8, 9, 10, 11, 12, 28, 29, 30, 31, 32, 33, 34, and 35 (See Present Office Action, paragraph 2) as well as claims 13, and 14-19 (see present Office Action, paragraph 3).

While Applicant acknowledges that the MPEP provides that "The Examiner may take official notice of facts outside the record which are capable of instant and unquestionable demonstration as being 'well known' in the art." (MPEP § 2144.03, emphasis added), the MPEP also provides that "if the Applicant traverses such an

assertion, the Examiner should cite a reference in support of his or her position." *Id.*

Moreover, the MPEP provides:

"In *Re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420-421 (CCPA 1970) [A]ssertions of technical facts in areas of esoteric technology must always be supported by citation of some reference work." "Allegations concerning specific 'knowledge' of the prior art, which might be peculiar to a particular art should also be supported." Furthermore, the Applicant must be given the opportunity to challenge the correctness of such assertions and allegations. "The facts so noticed served to 'fill the gaps' which might exist in the evidentiary showing" and should not comprise the principal evidence upon which a rejection is based. (*Id.*)

In the present Office Action, the Examiner has clearly failed to meet the standards for a *prima facie* case of obviousness of the pending claims. As evidenced by the following portions of the present Office Action, the Examiner merely reiterates the claimed elements (nearly word-for-word), acknowledges that the Carney does not disclose or suggest all claimed elements, and then states, in conclusory fashion, that those elements which are not disclosed are "well known."

With respect to claim 1, the Examiner states:

Carney does not teach receiving user selections of selected resources presented to user; an inbound dialed number identification service (DNIS) as one of the resource

categories. It would have been obvious to one of ordinary skill in the art at the time of the invention was made that the user ("supervisor") would select among available resources to supervise agents in the call center. For example, the supervisor may move agents between work groups. Furthermore, inbound dialed number identification service (DNIS) is well known and the advantage of using this feature is also well known in call centers. (Top of page 3.)

No support is provided for this naked assertion, despite Applicants' repeated requests.

With respect to claim 6, the Examiner states:

What is not taught by Carney is adding user-defined action detail data to call center, goal data, and user-defined threshold for selected goal such that selected available action occurs when at least user-defined threshold is reached. It would be obvious to one skilled in the art at the time the invention was made to add user-defined action detail data to call center, and to include some goals such as: number of calls answered, idle time, time spent talking to customers etc and user-defined threshold such as calls in a queue such that said user-selected available action (i.e. voicemail) will occur when user-defined threshold is met. These features are well known in the advantages of using them are also well known. (Top of page 4.)

No support is provided for this naked assertion, despite Applicants' repeated requests.

With respect to claims 7 and 8, the Examiner states:

Carney does not teach multiple thresholds including in optimization minimum and optimization realization, and an optimization maximum wherein a user-selected available action is assigned to each multiple thresholds. It would have been obvious to skilled in art at the time the invention was made to include user-defined thresholds to see when agent's goals are met. (Middle of page 4.)

No support is provided for this naked assertion, despite Applicants' repeated requests.

With respect to claim 9, the Examiner states:

Carney ... does not teach receiving a user selection of a selected goal categories, wherein goals within selected goal category are presented for selection by user. It would be more flexible to allow user to select goals within goal category. (Bottom of page 4.)

No support is provided for this naked assertion, despite Applicants' repeated requests.

With respect to claims 10-12, the Examiner states:

Carney does not teach user-defined thresholds, and selected available actions are received and assigned to create library of strategy profile, and a plurality of available actions are created. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have user-defined thresholds and view when agent's goals are met, organize strategies into library of strategy profiles, and create available actions so that user can easily selected. (Bottom of page 4)

No support is provided for this naked assertion, despite Applicants' repeated requests.

With respect to claim 13, the Examiner states:

Carney does not teach establishing a plurality of call center strategy profiles defining a plurality of call center strategies, each of said call center strategies including a plurality of goals having at least one user-defined strategy threshold; and receiving call center statistics data pertaining to call center and displaying the data. ... It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the feature of displaying call center statistics data, as taught by Cambray, in Carney's system in order to assist the supervisor

to supervise the call center. (Bottom page 8-top page 9)

No support is provided for this naked assertion, despite Applicants' repeated requests.

With respect to claims 14-19, the Examiner states:

Carney does not teach call center queue statistics data organized according to call center pass, allow user to create and displaying a user-defined task statistics viewing option.

It would obvious to one of ordinary skill in the art at the time the invention was made to have call center queue statistics so that a manager can balance calls load and move agents around, display selected task statistics viewing option. (Top page 9)

No support is provided for this naked assertion, despite Applicants' repeated requests.

With respect to claim 28, the Examiner states:

What is not taught by Carney is presenting said goals and available actions to user for selection, and for assigning at least one user-defined threshold to a user-selected goal and for assigning at least one user-selected available action to user-defined threshold such that user-selected available action will occur when user-defined threshold is met. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include some goals such as: number of calls entered, idle time, time spent talking to customers etc and user-defined threshold such as calls in a queue such that said user-selected available action (i.e. voice mail) will occur when user-defined threshold is met. These features are well known and the advantages of using them is also well known. (Middle of page 6.)

No support is provided for this naked assertion, despite Applicants' repeated requests.

With respect to claims 29-32, the Examiner states:

What is **further not** taught by Carney are multiple thresholds including an optimization minimum, an optimization realization, and an optimization maximum wherein a user-selected available action is assigned to each multiple thresholds. It would be obvious to one skilled in the art at the time the invention was made to include user-defined thresholds to see when agent's goals are met. (Bottom of page 6.)

No support is provided for this naked assertion, despite Applicants' repeated requests.

With respect to claim 33, the Examiner states:

What is not taught by Carney is presenting said goals and available actions to users for selection, and for assigning at least one user-defined threshold to a user-selected goal and for assigning at least one user-selected available action to user-defined thresholds such that user-selected available action will occur when user-defined threshold is met. It would have been obvious to one of ordinary skill in the art at the time the invention was made is to include some goals such as: number of calls answered, idle time, time spent talking to customers etc and user-defined threshold such as calls in a queue such that said user-selected available action (i.e. voice mail) will occur when user-defined threshold is met. (Bottom of page 7.)

No support is provided for this naked assertion, despite Applicants' repeated requests.

And, with respect to claims 34 and 35, the Examiner states:

What is not taught by Carney is displaying statistics in at least one user-defined format based upon one of relationship profiles, wherein statistics display manager accesses strategy profiles, compares statistics with at least one user-defined threshold, and provides an indication in the graphical user interface when threshold has not met. It would have been obvious to one of ordinary skill in the art at the time the invention was made is to have statistics



display manager to take care of collecting statistics.  
(Middle of page 8.)

No support is provided for this naked assertion, despite Applicants' repeated requests.

To the extent that the Examiner is relying on common knowledge in rejecting any of the pending claims, Applicants have previously traversed those claims of common knowledge and has called upon the Examiner to more specifically identify what facts are alleged to be common knowledge and further to provide evidence in support of such alleged common knowledge in the form of a citation to prior art references or in the form of an affidavit. Applicants have previously submitted that the cited elements are not well known in the art, let alone "notoriously" well known. Moreover, as evidenced above, Applicants submit that the Examiner has attempted to take "official notice" of substantial portions of each of the pending claims. This is hardly the kind of *di minimis* gaps in the record for a showing of obviousness that "official notice" is intended to fill. According, Applicants submit that the rejection of the pending claims under 35 U.S.C. § 103(a) is improper.

In addition to the fact that the Examiner has failed to

provide any support whatsoever for many of the recited elements, Applicants submit that the Examiner has failed to provide any meaningful references to the relevant column(s) or page number(s) and line number(s) to support the Examiner's position as required by MPEP section 706.02(j).

While the entire office action is replete with vague and unsupported "references", the following examples taken from the rejection of independent claim 1 are exemplary of the Examiner's failure to comply with MPEP section 706.02(j). For example, with respect to the element, "presenting to a user said plurality of different resources defined by said resource data", the Examiner merely refers to "FIG 5, supervisor" in a broad and vague manner.

This citation fails to comply with MPEP section 706.02(j) and, at best, provides support only for the fact that the call center management system, as disclosed by Carney, includes a supervisor and multiple work groups (i.e., the Visa and MC work groups). However, even this interpretation is far from clear given the Examiner's statements. Moreover, regarding the element "assigning said selected resources to a relationship profile", the only support that the Examiner provides is a vague reference to "Telephony call center". Regarding the elements, "assigning a

relationship key field corresponding to said relationship profile to said call center resources data for each of said selected resources assigned to said relationship profile" and "using said relationship key field to manage said call center", the Examiner merely refers to "FIG. 5, MC, Visa". Again, these references fail to provide any support for the claimed features. At best, the Examiner appears to be forcing Applicants to guess at and/or provide the Examiner's reasons/rationale for rejecting the claims.

Accordingly, Applicants respectfully requests the Examiner to provide meaningful references to the relevant column(s) or page number(s) and line number(s) to support the Examiner's positions as required by MPEP section 706.02(j) and to facilitate Applicants' understanding of the Examiner's positions.

In the Advisory Action, the Examiner makes reference to, "Examiner's Exhibit A". Unfortunately, "Examiner's Exhibit A" was not attached to the Advisory Action. Accordingly, Applicants are unable to comment on the validity and appropriateness of "Examiner's Exhibit A".

Additionally, in the second paragraph of 2 of the Advisory Action, the Examiner makes reference to US PTO class 379/265.07 and 379/265.08 in a vague and improper attempt at supporting or

explaining the Examiner's rejection of claim 6. Applicants respectfully requests that the Examiner clarifying how this reference is prior art and supports the Examiner's assertions.

Lastly, in the second paragraph 3 of the Advisory Action, the Examiner makes reference to Clare et al. (U.S. Patent No. 5,465,286) in an improper attempt at supporting or explaining the Examiner's rejection of claims 34 and 35. Applicants respectfully request the Examiner to properly cite and explain the relevance of the Clare et al. reference if the Examiner intends use the Clare et al. reference against claims 34 and 35.

Accordingly, since the Examiner explicitly acknowledges in the present Office Action that Carney does not disclose or suggest all of the elements recited in the pending claims, and has failed or refused to provide support for the "alleged common knowledge" which the Examiner apparently is relying on in rejecting the pending claims, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness of the pending claims. Therefore, Applicant respectfully requests rejection of the pending claims be withdrawn.


The Examiner is invited to telephone the undersigned, Applicants' Attorney of Record, to facilitate advancement of the

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present application.

Respectfully submitted,

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